



Journal of the Senate

Number 1

1978 Session

SITTING AS COURT OF IMPEACHMENT

(Excerpt from Senate Journal of Tuesday, April 18, 1978,
Regular Session)

ORGANIZATION—COURT OF IMPEACHMENT

The President presiding

Senator W. D. Childers moved that the Senate proceed to organize the Body as a Court of Impeachment to try the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, on the Articles of Impeachment preferred against him by the House of Representatives as originally exhibited to the Senate this date under authority of House Resolution 1560, Regular Session of the 1978 Florida Legislature.

The motion was adopted. The vote was:

Yeas—39

Mr. President	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Sayler	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil
Gordon	Myers	Thomas, Jon	

Nays—None

Senator W. D. Childers moved that the Senate fix 9:00 o'clock, a.m., May 18, 1978, as the time to convene for the purpose of trying Honorable Samuel S. Smith, on the Articles of Impeachment preferred against him by the House of Representatives, as more fully set forth in House Resolution 1560, with the Chief Justice of the Florida Supreme Court presiding, as provided by Section 17, Article III, of the Constitution of the State of Florida.

The motion was adopted and it was so ordered. The vote was:

Yeas—39

Mr. President	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Sayler	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil
Gordon	Myers	Thomas, Jon	

Nays—None

Senator W. D. Childers moved that a special committee be appointed to promulgate and present to the Senate for adoption, rules to govern the impeachment trial of Honorable Samuel S. Smith.

The motion was adopted and it was so ordered. The vote was:

Yeas—37

Mr. President	Graham	Poston	Trask
Castor	Hair	Renick	Vogt
Chamberlin	Holloway	Sayler	Ware
Childers, Don	Johnston	Scarborough	Williamson
Childers, W. D.	Lewis	Scott	Wilson
Dunn	MacKay	Skinner	Winn
Firestone	McClain	Spicola	Zinkil
Gallen	Myers	Thomas, Jon	
Gordon	Peterson	Thomas, Pat	
Gorman	Plante	Tobiassen	

Nays—None

The President appointed: Senator Hair, Chairman; Senators Gallen, Ware, Scott, W. D. Childers, Plante and Johnston.

Senator W. D. Childers further moved that the Committee be ordered to meet at the call of its chairman and to adopt rules which, immediately upon adoption, shall become fully effective and so remain until they are amended by the Senate.

The motion was adopted and it was so ordered. The vote was:

Yeas—39

Mr. President	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Sayler	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil
Gordon	Myers	Thomas, Jon	

Nays—None

Senator W. D. Childers moved that a committee be appointed to wait upon the Honorable Ben F. Overton, Chief Justice of the Supreme Court of Florida, to inform him that the Senate stands ready to organize as a Court of Impeachment and respectfully requests his presence for the purpose of presiding over the Senate during the organization and trial of the Honorable Samuel S. Smith.

The motion was adopted. The vote was:

Yeas—39

Mr. President	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Sayler	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil
Gordon	Myers	Thomas, Jon	

Nays—None

The President appointed Senators Hair, Castor and Sayler. The committee withdrew.

The committee subsequently returned to the Chamber escorting the Honorable Ben F. Overton, Chief Justice of the Supreme Court of Florida accompanied by the Honorable Joseph A. Boyd, Justice of the Supreme Court of Florida, who were presented to the Senate by the President. The President resumed his seat as the Senator from the 8th District.

The Chief Justice took the chair and stated: "Senators, I attend the Senate in obedience to your notice for the purpose of joining with you in forming a Court of Impeachment for trial of the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, and I am now ready to take the oath which will be administered by the Honorable Joseph A. Boyd, Justice of the Supreme Court of the State of Florida."

The oath was administered to the Honorable Ben F. Overton, Chief Justice of the Supreme Court of Florida, by Justice Joseph A. Boyd as follows:

"I do solemnly swear that in all things appertaining to the trial of the impeachment of the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

The Chief Justice:

"Senators, the oath will now be administered to you and you will please stand as your names are called and remain standing as the oath is administered."

The Secretary called the roll of the Senators in alphabetical order: Senators Barron, Brantley, Castor, Chamberlin, Don Childers, W.D. Childers, Dunn, Firestone, Gallen, Glisson, Gordon, Gorman, Graham, Hair, Henderson, Holloway, Johnston, Lewis, MacKay, McClain, Myers, Peterson, Plante, Poston, Renick, Saylor, Scarborough, Scott, Skinner, Spicola, Jon Thomas, Pat Thomas, Tobiassen, Trask, Vogt, Ware, Williamson, Wilson, Winn and Zinkil.

The Secretary advised the Chief Justice that the Senate of the State of Florida was ready to take the oath.

The Chief Justice administered the oath as follows:

"I do solemnly swear that in all things appertaining to the trial of the impeachment of the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

The Chief Justice then administered the following oath to Joe Brown, Secretary of the Senate:

"I do solemnly swear that I will faithfully and impartially perform the duties of Secretary to the Senate of the State of Florida, sitting as a Court of Impeachment in the trial of the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, now pending, and true and faithful record make of the same; so help me God."

The Chief Justice then administered the following oath to John D. Melton, Sergeant at Arms of the Senate:

"I do solemnly swear that I will faithfully and impartially perform the duties of Sergeant at Arms to the Senate of the State of Florida, sitting as a Court of Impeachment in the trial of the Honorable Samuel S. Smith, Circuit Judge, 3rd Judicial Circuit of Florida, now pending; so help me God."

Senator W. D. Childers moved that in order to provide a fair and orderly procedure for discovery prior to trial, the Senate hereby adopt Florida Rule of Criminal Procedure 3.220 effective immediately, insofar as that rule may appertain to the conduct of discovery prior to the trial of the Articles of Impeachment exhibited against Honorable Samuel S. Smith; however, discovery by both parties shall be completed prior to May 18, 1978 and with such terms and times as may be ordered by the Chief Justice.

The motion was adopted and it was so ordered. The vote was:

Yeas—40

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Saylor	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil

Nays—None

Senator W. D. Childers moved that the Chief Justice be authorized to call a pre-trial conference and to submit the matters resolved at the pre-trial conference to the Senate sitting as the Court of Impeachment.

The motion was adopted and it was so ordered. The vote was:

Yeas—40

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Saylor	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil

Nays—None

The Chief Justice informed the members that a pre-trial conference with the House Board of Managers and Mr. Joe Jacobs, representing Judge Samuel S. Smith, had been set for this day at 4:00 p.m. in Senate Committee Room 1.

Senator W. D. Childers moved that the Senate sitting as a Court of Impeachment for the purpose of trying Articles of Impeachment preferred against Honorable Samuel S. Smith now recess until May 18, 1978, at 9:00 a.m.

The motion was adopted and it was so ordered. The vote was:

Yeas—40

Barron	Gordon	Myers	Thomas, Jon
Brantley	Gorman	Peterson	Thomas, Pat
Castor	Graham	Plante	Tobiassen
Chamberlin	Hair	Poston	Trask
Childers, Don	Henderson	Renick	Vogt
Childers, W. D.	Holloway	Saylor	Ware
Dunn	Johnston	Scarborough	Williamson
Firestone	Lewis	Scott	Wilson
Gallen	MacKay	Skinner	Winn
Glisson	McClain	Spicola	Zinkil

Nays—None

The Chief Justice relinquished the chair to the President.

The President presiding

Senator W. D. Childers moved that the Senate resume the regular order of business.

The motion was adopted. The vote was:

Yeas—35

Mr. President	Chamberlin	Firestone	Gordon
Barron	Childers, Don	Gallen	Gorman
Castor	Dunn	Glisson	Graham

Hair	Peterson	Skinner	Ware
Henderson	Plante	Spicola	Williamson
Johnston	Poston	Thomas, Jon	Wilson
Lewis	Saylor	Tobiassen	Winn
McClain	Scarborough	Trask	Zinkil
Myers	Scott	Vogt	

Nays—None

Nays—None

Vote after roll call:

Yea—Graham

The following rules were submitted by the Special Committee on Impeachment Rules pursuant to the motion by Senator W. D. Childers on April 18:

Excerpt from Senate Journal of Thursday, May 4, 1978

The President presiding

The President announced he had received the following communication from Chief Justice Ben F. Overton:

The Honorable Lew Brantley
President, The Florida Senate

May 4, 1978

Dear Mr. President:

In re Impeachment of Samuel S. Smith,
Circuit Judge.

It is my suggestion and recommendation that the Senate convene as a court of impeachment on May 12, 1978, to consider the subjects of a continuance of these proceedings and the representation of the respondent.

The respondent has filed motions raising these issues, and I held a hearing thereon on April 28, 1978. I will shortly file with you for distribution to the entire Senate my findings on the law and recommendations pertaining to these issues.

For your information I have been advised that the trial of the respondent in the United States District Court in New Orleans will be in recess on May 12, 1978.

Very truly yours,
Ben F. Overton
Chief Justice

Senator W. D. Childers moved that the Senate convene as a Court of Impeachment with the Chief Justice in the chair on May 12, 1978, at 9:00 a.m. for the purposes of hearing the Chief Justice's recommendations and findings, and the taking of final action on Judge Samuel Smith's Motion for Continuance and request for appointed counsel. The motion was adopted. The vote was:

Yeas—32

Mr. President	Gorman	Peterson	Spicola
Barron	Hair	Plante	Thomas, Jon
Castor	Holloway	Poston	Thomas, Pat
Childers, Don	Johnston	Renick	Tobiassen
Childers, W. D.	Lewis	Saylor	Trask
Dunn	MacKay	Scarborough	Vogt
Gallen	McClain	Scott	Ware
Glisson	Myers	Skinner	Zinkil

Nays—None

Vote after roll call:

Yea—Graham

Senator W. D. Childers moved that the Chief Justice be notified of the action taken and that he be requested to be present in the chair at 9:00 a.m. May 12. The motion was adopted. The vote was:

Yeas—33

Mr. President	Gorman	Plante	Tobiassen
Barron	Hair	Poston	Trask
Castor	Holloway	Renick	Vogt
Childers, Don	Johnston	Scarborough	Ware
Childers, W. D.	Lewis	Scott	Winn
Dunn	MacKay	Skinner	Zinkil
Gallen	McClain	Spicola	
Glisson	Myers	Thomas, Jon	
Gordon	Peterson	Thomas, Pat	

RULES OF PRACTICE AND PROCEDURE WHEN SITTING ON THE TRIAL OF IMPEACHMENTS

1. When the Senate receives notice from the House of Representatives that Managers have been appointed to conduct an impeachment and have been directed to deliver Articles of Impeachment to the Senate, the Secretary of the Senate shall inform the House of Representatives when the Senate is ready to receive the Managers and the Articles of Impeachment.

2. After the Managers of an impeachment are introduced at the bar of the Senate, and signify that they are ready to exhibit Articles of Impeachment, the President of the Senate shall order the Articles to be exhibited and filed. The President of the Senate shall then inform the Managers that the Senate will proceed to consider the Articles.

3. Before proceeding to the consideration of the Articles of Impeachment, the Chief Justice, once himself sworn by an Associate Justice of the Supreme Court, shall administer the oath to the members of the Senate and the Secretary and Sergeant at Arms of the Senate.

4. The Chief Justice of the Supreme Court, or another justice designated by him, shall preside at the trial. All references in these rules to the Chief Justice shall mean the Chief Justice or another justice designated by him in accordance with Article III, § 17, Florida Constitution. Notice shall be given to him by the President of the Senate of the time and place fixed for the consideration of the Articles of Impeachment. On the day fixed to commence the consideration of the Articles, the Senate shall proceed to the consideration of such Articles, and shall continue in session from day to day (unless otherwise ordered by the Senate) until final judgment is rendered.

5. The President of the Senate shall have power to enforce all orders, mandates, writs, and precepts authorized by these rules, or as directed by the Senate.

6. The Senate shall have power to make all lawful orders and rules which it deems essential or conducive to the ends of justice. The Senate shall have power to compel the attendance of witnesses, to enforce obedience to its orders, mandates, writs, precepts, and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts, or judgments. The Sergeant at Arms, under the direction of the Senate, may employ such assistants as may be necessary to enforce, execute, and carry into effect the lawful orders, mandates, writs, and precepts of the Senate.

7. All process shall be served by the Sergeant at Arms of the Senate, any marshal or sheriff of any state, or their designee, or as otherwise ordered by the President.

8. After the presentation of Articles of Impeachment and the organization of the Senate, a summons shall be issued to the impeached officer unless the impeached officer, in writing, waives the issuance of such writ and service thereof and voluntarily submits to the jurisdiction of the Senate. The summons shall recite the Articles and notify the impeached officer

to file his responsive pleadings on or before a day and at a place as stated in the writ. The summons shall be served by the officers or persons named therein at least 10 days prior to the day fixed for filing of such responsive pleadings, either by delivery of an attested copy thereof to the impeached officer or, if that cannot conveniently be done, by leaving an attested copy at the last known place of abode of such person, or at his usual place of business, in some conspicuous place therein; or if such service shall be in judgment of the Senate, impracticable, notice to the impeached officer shall be given in such other manner, by publication or otherwise, as the Senate directs. If the impeached officer after service, fails to file timely responsive pleadings, or otherwise appear as may be directed in the summons, the trial shall proceed, nevertheless, as upon a plea of not guilty which plea may be entered by the Chief Justice for the impeached officer. If a plea of guilty is entered, judgment may be entered without further proceedings. The Chief Justice may, for good cause, extend the time set by the Senate for the impeached officer to file his responsive pleadings to the Articles of Impeachment, however, the Chief Justice shall not extend the time beyond that set by the Senate for the commencement of taking of evidence in the cause.

9. The officer perfecting service of the summons shall execute the following affidavit:

"I, _____ do solemnly swear that the return made by me upon the process issued on the _____ day of _____, 19 _____, by the Senate of the State of Florida against _____ was made in the following manner: _____

and that I have performed such service as therein described; so help me God."

The summons, return and affidavit shall be entered in the Journal. Should service of summons be waived, then this oath may be dispensed with.

10. The Secretary of the Senate shall maintain the original court file. All original documents and pleadings shall be filed with the Secretary.

11. The President of the Senate shall appoint a Special Committee on Impeachment Rules, which Committee shall meet at the call of its chairman and shall adopt rules which, immediately upon adoption, shall become fully effective and so remain unless and until they are amended by the Senate.

12. The Chief Justice may, upon timely notice to the Counsel for the Board of Managers of the House of Representatives and the impeached officer or his Counsel, conduct pre-trial conferences to consider and determine, but not limited to, procedural matters; the possibility of making stipulations of fact and admissions of documents that would avoid unnecessary proof at the trial; and the issues in the trial, and shall submit the matters resolved at the pre-trial conferences to the Special Committee on Impeachment Rules which Committee shall present the same to the Senate with recommendations.

13. At 9:00 o'clock, A.M., of the day appointed for the commencement of the taking of evidence in the trial of an impeachment, the legislative business of the Senate shall be suspended. The Secretary shall notify the Board of Managers that have been named by the House that the Senate is ready to proceed upon the impeachment in the Senate chamber.

14. The hours of the day during which the Senate shall sit shall be designated by the President unless otherwise ordered by the Senate. The adjournment of the Senate sitting in trial shall not operate as an adjournment of the Senate if in legisla-

tive session, but on such adjournment the Senate shall resume the consideration of its legislative business. If the Senate shall at any time fail to sit for the consideration of Articles of Impeachment on a day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming the trial. The Senate, sitting as a Court of Impeachment, may recess for a period of time on any trial day upon motion adopted by a majority vote of the members present.

15. The proceedings of the Senate while sitting as a Court of Impeachment shall be recorded under the direction of the Secretary of the Senate, and shall be published within 90 days after the final adjournment of the Court of Impeachment. The record of the proceedings together with a transcript of the testimony and judgment of the Court shall be filed as a permanent record of the Senate. A copy of the record of proceedings together with a copy of the transcript of testimony and a certified copy of the judgment of the Court shall be filed in the office of the Secretary of State of Florida.

16. All motions made by the parties shall be in writing and shall be addressed to the Chief Justice, except oral motions which are made during pre-trial conferences, hearings, or trial. If the Chief Justice or any Senator shall require it, such oral motions shall be committed to writing.

17. The Chief Justice shall rule on all motions, questions of law, questions of evidence and incidental questions, which rulings stand as the judgment of the Court, unless any member of the Court asks for a vote thereon, in which case the question shall be submitted to the Senate for decision.

18. Any evidence that is relevant and probative may be admitted, unless privileged or unless the Constitution otherwise requires its exclusion.

19. Witnesses shall be examined by one person on behalf of the party calling them, and then cross-examined by one person on the other side, unless otherwise directed by the Chief Justice. Re-direct and re-cross examination shall be as directed by the Chief Justice. The Chief Justice may limit any testimony which is cumulative or repetitious.

20. If a Senator wishes a question to be put to a witness, the question shall be reduced to writing, and put by the Chief Justice; however, with the approval of a majority of those members present, a Senator may put a question directly to the witness.

21. Subpoenas of any type shall issue upon application by the Managers of the impeachment or of the impeached officer, or upon application of counsel for either. All subpoenas shall be in the name of the Senate and shall be signed by the Chief Justice and attested to by the Secretary of the Senate.

22. The Managers of the impeachment and the impeached officer, or counsel, shall each be entitled to make an opening statement of no more than one hour duration. The impeached officer may reserve opening statement until the close of the Managers' case. The case, on each side, shall be opened by one person. The final argument on the merits may be made by two persons on each side (unless otherwise ordered by the Senate, upon application for that purpose). Argument shall be opened and closed on the part of the House of Representatives.

23. Except as otherwise provided in these rules, all orders and decisions upon which the members of the Senate vote shall be made by majority vote, by yeas and nays, which shall be entered on the record. No member shall speak for more than five minutes on an interlocutory question, and for not more than

ten minutes on the final question of whether the impeachment is sustained, unless by consent of the Senate, to be had without debate.

24. On the final question of whether the impeachment is sustained, the yeas and nays shall be taken on each Article of Impeachment separately, and if the impeachment is not, upon any of the articles presented, sustained by the concurrence of two-thirds of the Senators present, a judgment of acquittal shall be entered; but if the impeached officer shall be convicted upon any of said Articles by the concurrence of two-thirds of the Senators present, the Senate shall proceed to pronounce judgment.

25. The degree of proof required for and necessary to support a conviction is that which is necessary to move the conscience of two-thirds of the Senators present.

26. There may be admitted to the floor of the Senate, when sitting as a Court of Impeachment, only the Chief Justice of the Supreme Court of Florida and his assistants, the Senators, the Secretary of the Senate and his assistants, the Sergeant at Arms and his assistants, the impeached officer and his attorney or attorneys, the House Managers and their attorneys, staff approved by the President, necessary court reporters and witnesses called to testify in the case.

27. The placement of equipment for and the taking of photographs, motion pictures, video tape, television and recordings of all types are permitted only under the conditions set by and in those areas of the Senate Chamber and gallery as designated by the President of the Senate.

28. After the taking of testimony has commenced, a member of the Senate may be excused from further duty in the impeachment proceedings in case of emergency and upon his request therefor being approved by a majority of the members of the Senate present. Upon being excused, the member shall not participate further in the proceedings. Such Senator shall file his reasons for his request to be excused in writing with the Secretary of the Senate and the reasons shall be incorporated into the record. His absence shall not affect the results of the trial.

29. The Florida Rules of Civil Procedure and the Florida Rules of Criminal Procedure, where applicable, shall apply, except where they are in conflict with these rules, and in such cases, these rules shall prevail, provided, however, that nothing in such rules shall delay or prevent the trial by the Senate sitting as a Court of Impeachment. Application of the terms or times of any of the above rules may be adjusted or limited by the Chief Justice so as to avoid delay.

30. Rules number 1, 5, 6, 8, and 10 of the Rules of the Florida Senate, 1976-78, shall apply insofar as those rules are not in conflict with these rules.

31. These rules may be amended, or additional rules may be adopted by majority vote of the members of the Senate present and sitting as a Court of Impeachment.

32. A. Witnesses shall take the following oath:

"You, _____ do swear (or affirm), that the evidence you shall give in the case pending between the State of Florida and _____ shall be the truth, the whole truth, and nothing but the truth; so help you God."

Which oath shall be administered by the Secretary or any other authorized person.

B. Form of subpoena

The State of Florida, to _____, greeting:

You and each of you are hereby commanded to appear before the Senate of the State of Florida on _____, 19 _____, in the Senate Chamber, in the Capitol Building, in the City of Tallahassee, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives has impeached _____.

Fail not.

Witness the hand of the Chief Justice of the Florida Supreme Court as the presiding officer, and the Seal of the Florida Senate, at the City of Tallahassee, Florida, this _____ day of _____, 19 _____.

Attest:

C. Form of direction for the services of said subpoena:

The State of Florida, to _____, greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Tallahassee, Florida, this _____ day of _____, 19 _____.

Secretary of the Senate

D. Form of oath to be administered to the members of the Senate sitting in the trials of impeachments:

"I solemnly swear (or affirm), that in all things appertaining to the trial of the impeachment of _____ now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

E. Form of summons to be served upon the impeached officer:

The State of Florida, to _____, greeting:

Whereas, the House of Representatives of the State of Florida did on the _____ day of _____, 19 _____, exhibit to the Senate Articles of Impeachment against you, the said _____, in the words following:

(Here insert the Articles.)

And demand that you, the said _____ should answer the accusations as set forth in said Articles, and that such proceedings and judgments might be had as are agreeable to the law and justice.

You, the said _____ are therefore hereby summoned to be and appear before the Senate of the State of Florida, at their chamber, in Tallahassee, Florida, on the _____ day of _____, 19 _____, at _____ o'clock, A.M., then and there to abide by, obey and perform such orders, directions and judgments as the Senate of the State of Florida shall make according to the Constitution and Laws of the State of Florida, and at a time prior to that date to file your written responsive pleadings in the manner and times as required by the Chief Justice of the Supreme Court of Florida.

Fail not.

Witness _____ and presiding officer of the Senate at the City of Tallahassee, Florida, this _____ day of _____, 19 _____.

F. Oath to be administered to the Chief Justice by an Associate Justice of the Supreme Court:

"I solemnly swear that in all things appertaining to the trial of the impeachment of the _____, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."



Journal of the Senate

Number 2

May 12, 1978

SITTING AS COURT OF IMPEACHMENT

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of the State of Florida, convened at 9:00 a.m., pursuant to the motion by Senator W. D. Childers on May 4, 1978.

The Chief Justice presiding

The Managers on the part of the House of Representatives were represented by Representative William J. Rish and their attorney, Marc H. Glick.

The following Senators were recorded present—27:

Barron	Glisson	Myers	Thomas, Pat
Brantley	Gordon	Peterson	Tobiassen
Chamberlin	Hair	Plante	Vogt
Childers, W. D.	Henderson	Saylor	Ware
Dunn	Holloway	Scarborough	Wilson
Firestone	Lewis	Scott	Zinkil
Gallen	MacKay	Skinner	

Excused: Senators Jon Thomas, Don Childers, Johnston, Poston, Graham, Castor, Winn, Williamson, Gorman, McClain, Spicola, and Renick

SECRETARY: A quorum is present, Your Honor.

Writ of summons, notice of hearing dated April 21, 1978, attested copy of the Rules of Practice and Procedure of the Florida Senate when sitting in the Trial of Impeachment, precept, and an attested copy of HR 1560(1978) on the 21st day of April, 1978, were issued and service thereof made upon the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of Florida, by the Sergeant At Arms of the Senate on the 24th day of April, 1978, by delivering a true and attested copy thereof upon Samuel S. Smith in New Orleans Parish, Louisiana.

MR. CHIEF JUSTICE: Senators, if you would take your seats, please. This Senate is now convened as a Court of Impeachment as it pertains to the trial of Samuel S. Smith, Circuit Judge of the Third Judicial Circuit, pursuant to a notice of these proceedings setting forth two matters, the matter for a motion for continuance and the matter pertaining to legal representation.

As I understand it, a number of Senators have been excused from these proceedings today.

Senators, before proceeding on the two issues that are before the Court, I would like to make some preliminary remarks to you concerning both your responsibilities in these proceedings and my responsibilities. These remarks are in part similar to those made by both Chief Justice Terrell and Chief Justice Drew in prior impeachment proceedings.

You as Senators constitute a court of exclusive and original and final jurisdiction. You are the judge, jury and appellate court.

Impeachment proceedings are generally characterized as judicial in nature and the separate oath that you took in these proceedings is symbolic of that additional responsibility of your

office. It requires, as you recall, to do impartial justice to the parties in this cause.

My responsibility as presiding officer in these proceedings is to conduct them in a manner to insure the orderly presentation to you as an impeachment court of the material and competent evidence in these proceedings. I have a further responsibility to consult with you and advise you on the law that is applicable to the proceedings.

Under the rules which you adopted I may rule on pre-trial matters which ruling is submitted to your Rules Committee for recommendation and action. That is, under Rule 12.

Once a matter of law is submitted to you, you are the final authority and I only the advisor on the law. I have no authority to advise you on the merits of the case and have no authority to vote on any matter before you.

These proceedings being judicial in nature, due process rights have been recognized to be applicable in these impeachment proceedings. And the due process rights are those that are ordinarily applicable in judicial proceedings.

The due process rights applicable to a Respondent in an impeachment proceeding was addressed by Chief Justice Terrell who made the following observations in a brief addressed to this Senate:

The Respondent is entitled:

- (1) To be informed of the nature of the charges against him.
- (2) He is entitled to the aid of counsel.
- (3) To be confronted with witnesses against him.
- (4) To compulsory process of witnesses.
- (5) He cannot be compelled to be a witness against himself.
- (6) The rules of evidence observed in court trials are generally applicable.
- (7) A reasonable doubt of guilt must result in acquittal.
- (8) There must be a showing of wrong intent.
- (9) Precedents have due weight and every other constitutional guarantee is accorded to Respondent.

If there is a particular part of an impeachment proceeding that courts will review it is in the area of procedural due process. In the words of a former member of this Senate and Justice of the Supreme Court of Florida, former Justice Frederick B. Karl, in this recent Law Review article on impeachment which you received in this session, he stated, and I quote:

"In any event there can be little doubt that justice in cases of suspension or removal of an officer whose impeachment violates the minimum requirements of due process or any other of his constitutional rights will be afforded relief in either State or Federal Court."